Supreme Court, U.S.
FILED
NOV
JOSEPH F. SPANIOL, JR.
CLERK

No. 89-1817

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1990

COUNTY OF RIVERSIDE, and COIS BYRD,
SHERIFF OF RIVERSIDE COUNTY,
Petitioners,

vs.

DONALD LEE MCLAUGHLIN, et al.,
Respondents.

BRIEF OF AMICUS CURIAE IN SUPPORT OF PETITIONERS FILED ON BEHALF OF THE DISTRICT ATTORNEY, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

GROVER C. TRASK II
District Attorney
County of Riverside

4080 Lemon Street, 2nd Floor
Riverside, California 92501
(714) 275-5610

See inside cover

Bowne of Los Angeles, Inc., Law Printers. (213) 627-2200.

JULIANN ANDERSON
Certified Law Clerk
State of California

TIMOTHY J. SEARIGHT
Certified Law Clerk
State of California

4080 Lemon Street, 2nd Floor
Riverside, California 92501
(714) 275-5610

TABLE OF CONTENTS

	Page
STATEMENT OF INTEREST OF AMICUS CURIAE	1
SUMMARY OF ARGUMENT	2
FACTUAL BACKGROUND	3
I.	
RIVERSIDE COUNTY HAS TAKEN UP THE INVITATION OF *GERSTEIN* AND INTEGRATED PROBABLE CAUSE HEARINGS INTO OTHER PRETRIAL PROCEDURES WHICH HAS RESULTED IN GREATER PROTECTION OF THE RIGHTS OF WARRANTLESS ARRESTEES	8
II.	
THIRTY-SIX HOURS IS NEITHER A REALISTIC NOR PRACTICAL TIME PERIOD IN WHICH TO PROCESS ALL WARRANTLESS ARRESTEES AND PROVIDE THEM WITH PROBABLE CAUSE HEARINGS	15
A. Because courts operate on daily, not hourly, schedules, 36 hours is not a workable time period in which to make probable cause determinations	15
B. In many cases, Riverside needs 48 hours to complete procedures before a probable cause determination can be made	16

TABLE OF CONTENTS

Page

C. The lower court's geographic case-by-case determination of probable cause hearing time limits will "balkanize" Riverside County according to the detainee processing times of each of its jails 19

III.

RIVERSIDE'S PROCEDURES AND TIME LIMITS WITH REGARD TO WARRANTLESS ARRESTEES ARE WELL WITHIN THE MAINSTREAM OF THE PROCEDURES AND TIME LIMITS FOLLOWED BY THE OTHER STATES 20

CONCLUSION 21

TABLE OF AUTHORITIES

Cases

Page

Baker v. *Carr*, 369 U.S. 186, 82 S.Ct. 691, 7 L.Ed.2d 663 (1962) 13

Bernard v. *City of Palo Alto*, 699 F.2d 1023 (9th Cir. 1983) 11, 19

Gerstein v. *Pugh*, 420 U.S. 103, 95 S.Ct. 854, 43 L.Ed.2d 207 (1984) 2, 3, 8, 9, 12, 14, 22

Kanekoa v. *City and County of Honolulu*, 879 F.2d 607 (9th Cir. 1989) 11

Leland v. *Oregon*, 343 U.S. 790, 72 S.Ct. 1002, 96 L.Ed. 1302 (1952) 20

Llaguno v. *Mingey*, 763 F.2d 1560 (7th Cir. 1985) 10

Mallory v. *United States*, 354 U.S. 44, 77 S.Ct. 1356 (1957) 10

Matthews v. *Eldridge*, 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976) 10

McLaughlin v. *County of Riverside*, 888 F.2d 1276 (9th Cir. 1989) 11, 19

Press-Enterprise Company v. *Superior Court [of California for the County of Riverside]*, 478 U.S. 1, 106 S.Ct. 2735, 92 L.Ed.2d 1 (1986) 12

Schall v. *Martin*, 467 U.S. 253, 104 S.Ct. 2403, 81 L.Ed.2d 207 (1984) 9

Williams v. *Ward*, 845 F.2d 374 (2nd Cir. 1988) .. 21

Youngblood v. *Gates*, 200 Cal.App.3d 1302, 246 Cal.Rptr. 775 (1988) 15, 16

TABLE OF AUTHORITIES

Page

Constitution

United States Constitution
- First Amendment 12
- Fourth Amendment 10, 20

Statutes

California Penal Code
- Sec. 825 ..... 11, 13, 15
- Sec. 977.2 8
- Sec. 991 ..... 11, 15

No. 89-1817

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1990

COUNTY OF RIVERSIDE, and COIS BYRD,
SHERIFF OF RIVERSIDE COUNTY,
Petitioners,

vs.

DONALD LEE MCLAUGHLIN, et al.,
Respondents.

BRIEF OF AMICUS CURIAE IN SUPPORT OF PETITIONERS FILED ON BEHALF OF THE DISTRICT ATTORNEY, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

STATEMENT OF INTEREST OF AMICUS CURIAE

Amicus respectfully submits this Brief of Amicus Curiae in support of the Brief from the petitioner on the merits. Amicus is the People of the State of California in the person of Grover C. Trask II, District Attorney for the County of Riverside, State of California. The People of the State of California are the party plaintiff in all criminal actions prosecuted in California courts. As such, the People have an interest in a criminal justice system which protects the rights of all parties concerned, yet is efficient and devoid of unnecessary and arbitrary procedures.

In the instant case, Donald Lee McLaughlin brought a class action suit on behalf of himself and other inmates detained in the Riverside County Jail prior to arraignment. The suit challenged the County's policy of arraigning inmates within 48 hours of arrest. On April 19, 1989, Judge Richard A. Gadbois of the United States District Court, Central District of California, issued a preliminary injunction requiring the County to hold a separate probable cause hearing within 36 hours of a warrantless arrest. The Ninth Circuit Court of Appeals upheld the injunction on November 8, 1989.

This issue is important to the Amicus because defendants' right to a probable cause determination within a reasonable time is already protected under Federal and State law, as well as by County procedure. The addition of this separate hearing, just 12 hours prior to arraignment, would be unnecessarily burdensome to an already overworked system. More importantly, given the number of administrative steps that must be completed prior to determining probable cause, the elimination of 12 hours of working time could mean that detainees posing a threat to the community are released — not because of a lack of probable cause, but because there simply was not enough time to process their cases.

It is for these reasons that the Amicus has a stated interest.

SUMMARY OF ARGUMENT

California and Riverside County have taken up the invitation of the Court in *Gerstein* v. *Pugh*, and integrated probable cause determinations into the process of arraignment. By so doing, Riverside has been able to provide for District Attorney review of all serious charges and attorney representation of defendants at probable

cause hearings — procedures not required by the Court in *Gerstein*. While these additional procedures and rights sometimes take 48 hours and not the 36 hours mandated by the lower courts, that added time is warranted and reasonable in light of the greater protections provided those arrested without warrants.

The lower courts' injunction requiring probable cause hearings for warrantless arrestees within 36 hours of arrest does not consider several points important in the day-to-day administration of criminal justice. In addition to the greater protection that can be afforded warrantless arrestees if the present 48-hour time limit is allowed, the lower courts do not consider the fact that some cases are complex and can require a vast array of interagency coordination. Also, a 36-hour rule is not reasonable or practical in light of the daily 24-hour schedules under which courts, in fact, operate. Lastly, as an indication of overall understandings of fairness, the California and Riverside 48-hour rule, in which probable cause hearings must be afforded to warrantless arrestees, is well within the mainstream of the practices of the other States.

FACTUAL BACKGROUND

The warrantless arrest of a person on the streets of Riverside County sets in motion a long series of steps leading to arraignment. The processing of the detainee between arrest and arraignment may be divided into six categories: (1) police functions; (2) jail functions; (3) court liaison functions; (4) district attorney functions; (5) transportation procedures; and (6) the arraignment procedures themselves. Although this process can be initiated by any one of the 16 different law enforcement agencies in Riverside County, the procedures themselves are standard throughout the area.

The pre-arraignment process begins, then, with a warrantless arrest. If the crime is serious, the officer may have to gather evidence, or call in additional officers or criminalists from the State Department of Justice to do so. Additionally, interviews and a field lineup may occur. The officer making the arrest then brings the suspect either to the Riverside County Jail (in the downtown area of the City of Riverside), the Indio Jail, or the Blythe Jail[1] Once there, the arresting officer waits for admittance into the booking area, and stays at the booking desk with the detainee until the latter is accepted for detention. (In the meantime, the officer fills out a receiving sheet, which the booking deputy subsequently reviews.)

Once the detainee is safely in the hands of the jail staff, the arresting officer leaves to fill out his arrest report.

The police report itself consists of a standard form with boxes to fill out and a narrative portion. Once the officer has finished describing the events surrounding the arrest, the report is reviewed by a sergeant on duty. If the report is incomplete or inadequate, it is referred to the officer, who adds supplemental material and returns the report to the desk sergeant. Delays may occur at this stage if the arresting officer is off-duty when the inadequacy is discovered.

Occurring simultaneously at this time is the jail's booking procedure. After the officer leaves the arrestee in the booking deputy's custody, the deputy fills out a booking

[1]Riverside is the fourth-largest County in California, and extends from within 15 miles of the coast to the Arizona border. Since crossing the breadth of the County can take four to five hours, officers take arrestees to the County jail nearest them. The Riverside Central Jail serves the Western half of the County, while Indio serves the central desert area and Blythe serves the border region near Arizona.

slip, identification package, identification wristband, property folder, money, and pink housing card. The detainee is medically screened, and is examined by the nurse on duty if there is any complaint of sickness or injury.

The detainee's personal property and money is then inventoried and sealed in a personal property bag. A receipt is issued, and the property bag is placed in a property folder and filed. Any money is forwarded to the jail's business office for safekeeping, while the property is placed in the property room. The inmate is then taken to the print room, where he is photographed and fingerprinted. He is then moved to another room for a recognizance or house arrest interview. If, after those interviews, the jail staff concludes that the inmate should be housed in jail, the inmate is taken to a dressing room, where he dons a jail jumpsuit. (His personal clothing is bagged and sent to the property room.)

The booking file, now complete, is sent to the business office. There, the clerks conduct local and federal computer checks, place the inmate's money in a cash register, complete money and status cards, color-code the file for release priority, and add the inmate's name to the court calendar.

While his file is being processed, the inmate is moved to temporary housing and is allowed to make his telephone calls. After this he is moved to permanent housing in a jail cell (or "tank").

Problems in the housing stage may occur due to the backup of pending bookings, the housing of transfers, the need for emergency transportation or hospital runs, violent or intoxicated inmates, the time needed to provide

meals, or a general facility lock-down, among other occurrences.

The next stage in the pre-arraignment process is the court liaison's function.[2] The liaison officer receives the police report and prepares the documents needed by the District Attorney's Office — namely, the complaint form and copies. The liaison official also conducts a computer check on the inmate for criminal records and/or warrants. (The check covers the Department of Motor Vehicles, Riverside County records, and California and F.B.I. files.) Once the documents and computer check are complete, the liaison officer assembles the papers into a package, makes a log entry, and hand-carries the documents over to the District Attorney's Office. He then deposits it at the front counter. Once at the District Attorney's Office, the inmate's packet is time-stamped and sent through a series of four clerks. These clerks assign the complaint to a Deputy District Attorney, check for pending cases, and start a computer file for the inmate (if one is nonexistent). They also verify the priority and in-custody data with jail officials, print out a computerized history of the inmate's prior cases, and check the information on the reports.

Once the Deputy District Attorney receives the packet, he or she reviews the complaint and exercises the District Attorney's function of approving the charges, scaling them down, or dismissing them altogether, depending upon the circumstances of the case and the existence of

[2]Each law enforcement agency has a court liaison officer. In the Sheriff's Department, the liaison officer is a sworn deputy; in police departments, the liaison is a public affairs official.

probable cause.[3] The deputy prosecutor then passes the file on to a clerk who types the complaint into the computer, generates a court copy, and attaches it to the packet. Misdemeanor and felony cases are sorted and separated. The counter clerk then time-stamps the court copy of the complaint and leaves the packet to be picked up by the court liaison officer.

The complaint and accompanying documents (computer printouts, etc.) are filed with the court by the liaison officer, who hand-carries them to the court clerk.

At this point, the paperwork for the arraignment is complete: the court will now have not only the police report, but the complaint, citations, and other documents at its disposal. Now all that remains is to either transport the inmate (if the proper court is a branch and is not in downtown Riverside) or bring him into the jail's two-way video arraignment room, where the judge has direct, live contact with the inmate and arraigns him.

If he is to be transported, the inmate is located in the jail. His identification is checked, he is searched, and then he is moved to a staging area in the jail. There, all the inmates scheduled for arraignment are chained together and taken out to a transport van. (The relevant van leaves between 6:00 and 7:30 a.m., depending on the location it is bound for. Western Riverside County has seven branch courts, each of which is 30 to 45 minutes from the downtown jail.) At court, the inmates are taken to a holding area and moved to the courtroom when called. A public defender is available to help them at that time.

[3]In 1989, 42,512 requests for filings were received by the District Attorney's Office. Of these, 29,436 were filed as complaints. (Office of the Riverside County District Attorney, 1989 Statistical Report (See Exhibit A) (1990).)

If the inmate is to be arraigned in Riverside Municipal Court and waives his right to personally appear before the judge, he can be arraigned via a live, two-way video camera pursuant to California Penal Code Section 977.2. Prior to communicating with the judge, the inmate is shown a videotape, wherein a municipal court judge explains his rights, including the procedure for determining probable cause during the arraignment process. Later, when the public defender arrives (prior to the actual arraignment), he or she asks the inmate if he understands the tape, and if he has any questions. Typically, inmates here have no questions, and the individual arraignments then proceed. At every arraignment, the defendant is asked whether he desires an immediate probable cause hearing. Virtually every defendant waives this right.

This, then, is a basic sketch of the Riverside County procedures leading to and including arraignment.

I.

RIVERSIDE COUNTY HAS TAKEN UP THE INVITATION OF *GERSTEIN* AND INTEGRATED PROBABLE CAUSE HEARINGS INTO OTHER PRETRIAL PROCEDURES WHICH HAS RESULTED IN GREATER PROTECTION OF THE RIGHTS OF WARRANTLESS ARRESTEES

Gerstein's invitation to the States to integrate the probable cause determination into other pretrial procedures has been often cited:

> "[T]he nature of the probable cause determination usually will be shaped to accord with a State's pretrial procedure viewed as a whole .... [W]e recognize the desirability of flexibility and experimentation by the States. It may be found desirable, for example, to make the probable cause determination at the suspect's first appearance before a judicial officer ... or the determination may be incorporated into the procedure for setting bail or fixing other conditions of pretrial release." (*Gerstein* v. *Pugh*, 420 U.S. 103, 124-25, 95 S.Ct. 854, 868, 43 L.Ed.2d 54 (1975).)

Gerstein's flexible approach has been affirmed as a sound one most recently by the Chief Justice writing for the majority in *Schall* v. *Martin*: "The Court in *Gerstein* indicated approval of pretrial detention procedures that supplied a probable cause hearing within five days of the initial detention." (*Schall* v. *Martin*, 467 U.S. 253, 300, fn. 28, 104 S.Ct. 2403, 2416, fn. 28, 81 L.Ed.2d 207 (1984).) The Court was citing to the A.L.I. Model Code of Pre-arraignment Procedures that are remarkably similar to those in place in Riverside County.

In *Schall*, the Court, while upholding a 72-hour detention, also indicated that there is a dialectic between the extent of the procedures offered to make the probable cause determination and the length of time the detainee may be held before the determination is made. "The brief delay in the probable cause hearing may actually work to the advantage of the [accused] since it gives his counsel usually appointed at the initial appearance ... time to prepare." (*Id.*) Within certain limits, the more procedures that are offered, the more time may pass before the probable cause determination must be made.

Recognition of this dialectic between the length of time detained and the extent of procedures offered to determine probable cause brings the Fourth Amendment cases beginning with *Gerstein* in line with their constitutional cousins, the civil procedural due process cases, such as

Matthews v. *Eldridge*, 424 U.S. 319, 96 S.Ct. 893, 47 L.Ed.2d 18 (1976). Said the Court in *Matthews*:

> "The specific dictates of due process generally require consideration of three distinct factors: First, the private interest that will be affected by the official actions; second, the risk of an erroneous deprivation of such interests through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards, and finally, the Government's interest, including the function involved and the fiscal and administrative burdens that the additional or a substitute procedural requirement would entail." (*Matthews* v. *Eldridge*, 424 U.S. 319, 335, 96 S.Ct. 893, 903, 47 L.Ed.2d 18, (1976).)

In the Fourth Amendment and *Gerstein* setting, the private interest affected is that of the restraint on liberty when an individual is detained. The second factor is the probable value of additional procedures in assuring the accuracy of the probable cause determination. The final factor is the governmental burdens and costs that additional procedures would entail — though in the criminal procedure setting this factor would be of considerably less weight than in civil settings.

Certainly never may a detention be justified by a law enforcement need to develop facts establishing probable cause before the detainee is brought before a magistrate. (*Mallory* v. *United States*, 354 U.S. 44, 77 S.Ct. 1356 (1957).) It is this point, more than any other, that has caused the Court of Appeals to find lengthy detentions "unreasonable." In *Llaguno* v. *Mingey*, the Seventh Circuit found a 42-hour detention unreasonable where the police detained the owner of a car only for the purpose of trying to connect him to a killer who had used it. (*Llaguno* v. *Mingey*, 763 F.2d 1560, 1568 (7th Cir. 1985).)

Where detention is not prolonged or for an improper purpose, it is not unreasonable to delay a probable cause determination in order to afford more complete protection of the detainee's procedural rights and improve the accuracy of that probable cause determination.

The Ninth Circuit Court of Appeals has held that Riverside must provide a probable cause determination within 36 hours and not the 48 hours as has been dictated by California law, the probable cause determination being afforded at arraignment.[4] The Ninth Circuit's argument is that no more than 36 hours are needed in Riverside for the paperwork to be completed and a probable cause determination to be made. (*McLaughlin* v. *County of Riverside*, 888 F.2d 1276, 1278-79 (9th Cir. 1989); see also, *Bernard* v. *City of Palo Alto*, 699 F.2d 1023 (9th Cir. 1983) (24 hours to make probable cause determination in Santa Clara County, California, imposed).) In essence, the Ninth Circuit asserts that an after-the-fact arrest warrant must be secured as soon as police officers record on paper the particular facts supporting the arrest and bring the person to court.[5]

The Ninth Circuit fails to recognize that Riverside County affords two additional procedures to warrantless arrestees that greatly improve the accuracy of the probable cause determination. The Riverside County District

---

[4]See California Penal Code Sections 825 and 991.

[5]The Ninth Circuit's opinions on warrantless arrestees have been somewhat quixotic. In *McLaughlin* and *Bernard*, the Court held that law enforcement must complete the necessary paperwork and no more before deciding probable cause. In *Kanekoa*, however, the Court found it reasonable to detain intoxicated individuals even though the paperwork was complete so that they might have an opportunity to explain their conduct. (*Kanekoa* v. *City and County of Honolulu*, 879 F.2d 607 (9th Cir. 1989).)

Attorney's Office reviews and approves all serious charges before a criminal complaint can be filed. Although, of course, this process cannot substitute for the neutral magistrate requirement of *Gerstein,* it does provide a method of eliminating frivolous or simply poor cases. As indicated in Exhibit A, over ten percent of all potential cases are eliminated by this screening process. Second, every warrantless arrestee is provided with counsel at arraignment when the probable cause hearing is afforded and has the right to put forth evidence on his or her own behalf.[6] By the language of *Gerstein* itself, these procedures are not required. (*Gerstein* v. *Pugh,* 420 U.S. 103, 95 S.Ct. 854, 43 L.Ed.2d 54 (1975).) Nevertheless, California and Riverside County provide them, though these procedures sometimes necessitate holding the hearing beyond the 36 hours mandated by the Ninth Circuit. The Ninth Circuit's 36-hour arbitrary and specific timetable for probable cause determinations is contrary to *Gerstein* and creates due process inequities for both the defendant and the People.

The Riverside County District Attorney's Office is, of course, greatly concerned with protecting the rights of defendants. Our interest, however, in maintaining district attorney review and approval of all charges and in securing a defense attorney at the probable cause determination has more practical roots.

---

[6]This court has once before had occasion to note the extensiveness of procedures Riverside offers criminal defendants. In *Press-Enterprise Company* v. *Superior Court [of California for the County of Riverside],* 478 U.S. 1, 106 S.Ct. 2735, 92 L.Ed.2d 1 (1986), this court found the adversarial procedures offered a defendant in a preliminary hearing so extensive as to warrant a qualified First Amendment right of access. In that case, too, the District Attorney in Riverside filed an Amicus brief in support of the additional procedures and in support of First Amendment access to them.

The resources of the District Attorney's Office are limited. We cannot afford, given the number of attorneys and amount of criminal activity in Riverside, to let frivolous or factually weak cases make their way far through our pretrial procedures. With a complete 48-hour time period, we can provide for District Attorney review of police reports before charges are filed.[7]

In addition, with a 48-hour rule the County can provide defendants with defense attorneys at arraignment when the probable cause determination is afforded, giving the defendant an opportunity to set forth facts that might not have been included in police reports. At the District Attorney's Office we are well aware that police officers are well-versed in the rules of search and seizure and can craft their description of the facts leading up to arrest in the most favorable light possible. We favor the provision of defense attorneys at the arraignment and probable cause hearing stage so that the defendant can feel free to tell his or her side of the story and have it offered up to a magistrate as a reason why the defendant should be released. It is to be noted that time and again the Court has pointed out the efficacy of the adversarial process in uncovering truth. (*Baker* v. *Carr,* 369 U.S. 186, 204, 82 S.Ct. 691, 703, 7 L.Ed.2d 663 (1962).) Thus, if the County must comply with the 36-hour rule set forth in the lower courts, the County will no longer be able to provide these additional procedures.

In preparation for compliance with the District Court's order that hearings be conducted in 36 hours, procedures were designed for meeting the time limit modeled after

---

[7]Under Section 825 of the California Penal Code, if the 48 hours tolls on a Sunday or court holiday, the arrestee must be brought before a magistrate in the next regular court session. This practice is in keeping with the vast majority of the states.

those in nearby Orange County (where the 36-hour time limit has not been challenged). To make the probable cause determination, the position of judicial "hearing officer" was created. This hearing officer was to stay in the jail, sit at a table and review probable cause reports written by police officers. The hearing officer, without speaking with the defendant, would then indicate on a list containing the names of all detainees whether probable cause was found. The record describes these proposed procedures in greater detail.

This process, though complying with *Gerstein* since the judicial officer is neutral, is far less effective in screening out defective charges and, therefore, in protecting arrestee's rights. What is more, the ultimate effect of removing the probable cause determination from arraignment, as is the current process, will be to slow the pre-trial procedures as a whole.

In sum, the Ninth Circuit's 36-hour rule is one that is not desirable from anyone's perspective. The District Attorney does not want it because it will greatly weaken the screening of weak cases. Defense attorneys will not want it because they will not be able to represent their clients when probable cause decisions are made. Arrestees likely will not want it because they will have no defense attorneys to speak with at probable cause hearings. If 12 more hours are allowed, the County could provide far more accurate procedures for making the probable cause determination and without the added cost of paying for judicial hearing officers.

The District Attorney's Office is well aware that 12 more hours is 12 more hours of incarceration to arrestees. With those 12 more hours, however, the County can greatly increase the accuracy of the probable cause hearing by providing the defendant with counsel, and, in the

process save the County some money. For these reasons, initiating the probable cause determination with an arraignment that is always to take place within 48 hours is, on balance, reasonable.

II.

THIRTY-SIX HOURS IS NEITHER A REALISTIC NOR PRACTICAL TIME PERIOD IN WHICH TO PROCESS ALL WARRENTLESS ARRESTEES AND PROVIDE THEM WITH PROBABLE CAUSE HEARINGS

A. Because courts operate on daily, not hourly, schedules, 36 hours is not a workable time period in which to make probable cause determinations.

Even if Riverside ceased to provide additional procedures to protect the rights of warrantless arrestees, it is not practical, nor realistic, that probable cause hearings be provided *all* warrantless arrestees within 36 hours.

California Penal Code Sections 825 and 991, and the policy of Riverside County, require that warrantless arrestees be brought before a magistrate and be provided probable cause hearings "without unreasonable delay, and, in any event within two days after his arrest. . . ." Although there is currently a conflict among the California Appellate Courts, a recent decision has indicated that the arrestee must be brought before a magistrate within two *court days* of arrest, and not the often lengthier 48 hours. (*Youngblood* v. *Gates,* 200 Cal.App.3d 1302, 246 Cal.Rptr. 775 (1988).) A person taken into custody at 8:00 p.m. on a Monday must be brought before a magistrate by Wednesday afternoon, even though 48 hours tolls at 8:00 p.m. on that Wednesday, a time when the courts are not in session.

Now apply the 36-hour plan to the 8:00 p.m. arrestee. As an initial matter, there is a problem in defining what 36 hours means in terms of *Youngblood's* "court days" interpretation — perhaps one and a half court days? Even if 36 hours are taken by their plain meaning, the 8:00 p.m. arrestee will have to be brought before a magistrate or a hearing officer within 24 hours because 36 hours will toll at 8:00 a.m., before a court is in session. This means, in turn, that all of the paperwork and procedures described in the "Factual Background" portion of this brief will have to occur during the night so that the arrestee can be prepared for arraignment on the next day.

A 36-hour rule will, as a practical matter, mean that in most cases Riverside will only have 24 hours, or less, to complete all the steps necessary before a probable cause determination must be made. It is doubtful that this is the kind of limit the District and Appellate Courts intended to impose, but that will be the practical result. While a 48-hour or even 24-hour limit might have been understandable in light of court schedules, 36 hours simply makes no sense.[8]

B. In many cases, Riverside needs 48 hours to complete procedures before a probable cause determination can be made.

As the record shows, in nearly 90 percent of all cases in Riverside the procedures needed to complete arrest reports can be completed in 24 hours or less. However, in approximately ten percent of the cases, complications may be added which will act to slow the procedures

[8]Note in Exhibit B, that of the States setting firm outer limits, all but one do so in 24-hour blocks.

described in the factual background portion of this brief.[9] For example, at a crime scene, where there has been a homicide for instance, a number of agencies in addition to the police or sheriff may respond and be required to gather evidence and file reports. The coroner will respond to examine the body before it is moved; the Criminalistics Branch of the California Department of Justice may respond to gather evidence and take samples; the F.B.I. may appear if the crime is somehow believed to have an interstate character. All of these agencies must file reports, and when they respond to a scene after a crime has been committed, their reports may be important in deciding if a person was properly arrested at the scene upon probable cause.[10] Also, many of our crimes, including the more complex ones, are drug-related. There will be probable cause to detain the individual when the effects of the narcotics, and being under the influence of them, are obvious. It may not be possible to question the individual to determine the extent of his or her involvement in the other crimes until the effects of the narcotics have worn off and the person is able to understand *Miranda* warnings.[11] In addition, in drug cases, blood and urine samples

[9]This need for extra time in certain cases is in accord with the practice of the other States. Most States would simply factor these problems into the "without unreasonable delay" calculation to expand time limits. Wyoming, for example, has a policy of requiring the probable cause determination in 24-hours. It also has a policy, however, of allowing up to 72 hours in complex felony cases.

[10]Always to be a factor in Southern California are highway travel times of the various agencies and the arrestee. If a crime occurs during or just before rush hour, movement back and forth to crime scenes can happen with painful slowness.

[11]Law enforcement will as a matter of course run "rap sheets" on an arrestee detailing any previous criminal activity. Although rap sheets are not needed to determine probable cause, they are essential

must be taken soon after the arrest and before the narcotics leave the bloodstream. For this a nurse will be required, the law enforcement agencies being concerned about their own possible civil liability when taking such samples.

These are only a few of the problems that may arise to slow particular cases and are intended only to give a flavor of the variability of procedures that may take place just after arrest.

In addition, there are systemic problems which may arise in the processing of arrestees. For instance, paperwork on a particular arrestee must be examined in three essential locations, the police or sheriff's agency, the District Attorney's Office, and the courts. In the police or sheriff's office, a desk sergeant will review reports both for completeness, and for the sufficiency of probable cause. The sergeant may delay the review of less complex cases in order to make sure all the cases are processed within 48 hours. Subsequently, in the District Attorney's Office, only a limited number of attorneys are available to review reports and approve charges. Lastly, in the courts, complaints are divided along the lines of misdemeanors and felonies in order to assure that the most experienced judges examine the more serious cases. It would be faster to not make these distinctions between charges, but the presence of these self-imposed bottlenecks is to the defendant's advantage.

---

to arraignment and bail determinations. Someone arrested for child neglect is viewed very differently if they have a long history of violent crime, for example.

C. The lower court's geographic case-by-case determination of probable cause hearing time limits will "balkanize" Riverside County according to the detainee processing times of each of its jails.

In the lower court's *McLaughlin* decision, the Ninth Circuit noted that the District Court had limited the application of the 36-hour time limit to Riverside County's Central Jail. In other jails in the County it indicated that time limits might be greater or less than 36 hours. It is to be noted that in *Bernard* v. *City of Palo Alto,* the Ninth Circuit upheld a 24-hour limit in Santa Clara County, California. (*McLaughlin* v. *County of Riverside,* 888 F.2d 1276, 1278-79 (9th Cir. 1989).)

If the Federal Courts continue on their present path, each of the Counties in California and ultimately each of the States over which the Ninth Circuit has jurisdiction will be broken up into smaller units with respect to warrantless arrestee detention limits that would center around each of the jails in the Counties and States. Ultimately, if this kind of "balkanization" continues, some absurdities could result. When determining whether an arrestee was held too long before a probable cause determination was made, argument could center on which side of the street a person had been arrested, where the street marked the boundary of the limits of jails to which a detainee should be taken.

California law sets a uniform 48-hour time limit for warrantless detentions that, of course, applies statewide. The single uniform application of a law is a far sounder approach than the jail-by-jail approach the Ninth Circuit appears to be taking. Though some jails may be able to process detainees somewhat faster than others, the difference is slight and a uniform time period will avoid the

confusion — and possible equal protection problems — that might result from the Ninth Circuit's approach.

III.

RIVERSIDE'S PROCEDURES AND TIME LIMITS WITH REGARD TO WARRANTLESS ARRESTEES ARE WELL WITHIN THE MAINSTREAM OF THE PROCEDURES AND TIME LIMITS FOLLOWED BY THE OTHER STATES

The fact that a practice is widely followed by a large number of States is not, of course, conclusive in determining whether the practice is within the bounds of due process or the Fourth Amendment. The Court has noted, however, that it is plainly worth considering the practices of the other States to determine whether the practice "offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental." (*Leland* v. *Oregon*, 343 U.S. 790, 798, 72 S.Ct. 1002, 1007, 96 L.Ed. 1302 (1952).)

The attached Exhibit B describes the practices of the other States with regard to warrantless arrestees and shows that California's practices are well within the mainstream of the practices of the other States. A few important facts should be noted.

First, a majority of the States set no outer time limit by which a probable cause determination for warrantless arrestees must be made. Rather, they follow the federal practice of requiring presentation to a magistrate "without unnecessary delay." Nearly two dozen States do, however, have firm outside time limits written directly into their statutes. Twenty-four hours is common, but greater time limits are also found. Nevada set 72 hours as the outside time limit, as does Louisiana and Indiana;

North Carolina has 96 hours; and Georgia, Hawaii, and Rhode Island, have 48 hours. It is worth noting that States with short time limits, Missouri with 20 hours and Oregon with 36 hours might be termed low volume crime areas. In New York City — certainly one of the highest crime areas in the Nation — the Second Circuit in *Williams* v. *Ward* permits up to 72 hours before the probable cause determination is made. (*Williams* v. *Ward*, 845 F.2d 374 (2nd Cir. 1988).) In addition, geographic problems may expand outside time limits. In many states with rural counties it is not uncommon for a suspect to remain in jail for as much as a week before a judge arrives.

Second, California is in line with the overwhelming majority of States in combining the probable cause to detain determination with arraignment or arraignment-like procedures. Only a bare handful of the States make the probable cause to detain determination a separate stage of the proceedings.

Third, California and Riverside County are unique in providing adversarial procedures for the probable cause determination within a rigid time period in which the determination must be made. Other States which provide adversarial procedures use the "without unreasonable delay" language and leave the period in which the determination must be made undetermined.

CONCLUSION

The Riverside County District Attorney has a duty to assure that the criminal justice system, within the County, operates fairly and effectively. In furtherance of this duty, the Riverside County District Attorney submits this Brief of Amicus Curiae in support of the petitioner, Riverside County. The Amicus, as the representative of

the People of California, respectfully requests this Court reverse the decision of the Ninth Circuit Court of Appeal.

The State of California and Riverside County have taken up the invitation of this court in *Gerstein* v. *Pugh* and integrated probable cause determinations into the arraignment process, which is always to occur within 48 hours. With this amount of time, the County is able to assure warrantless arrestees the representation of counsel at arraignment when probable cause hearings are afforded and provide for District Attorney approval of all charges before they are filed in order to eliminate frivolous or factually weak cases. These additional protections make a 48-hour detention time reasonable.

Respectfully submitted,

GROVER C. TRASK II
District Attorney
County of Riverside

EXHIBIT A

EXHIBIT A

FELONY STATISTICAL INFORMATION
RIVERSIDE COUNTY DISTRICT ATTORNEY'S OFFICE
Month of December, 1989

	Riverside Division		Cumulative Total	
Felonies:	1989	1988	FY 89-90	Cal. Yr. 89
Requested	1,076	959	6,618	12,608
Filed	548	405	3,190	5,155
17b	195	428	801	1,836
Rejected	78	133	577	1,051
Informations Filed	64	108	584	1,161
17b Reduction @ Prelim	110	87	450	797
Dismissals @ Prelim	24	48	173	396
Dism Refiled as Felonies	4	6	24	71
Pending Homicides	49	42	N/A	N/A
Violation of Probation	0	2	42	50
State Prison Commitments	106	87	804	1,533

	Desert Division		Cumulative Total	
Felonies:	1989	1988	FY 89-90	Cal. Yr. 89
Requested	395	439	2,326	4,976
Filed	159	152	961	1,969
17b	50	34	298	722
Rejected	137	173	806	1,711
Informations Filed	27	20	165	343
17b Reduction @ Prelim	11	14	62	156
Dismissals @ Prelim	9	17	72	152
Dism Refiled as Felonies	2	4	9	25
Pending Homicides	13	13	N/A	N/A
Violation of Probation	3	0	6	6
State Prison Commitments	48	29	292	517

Felonies:	County Totals 1989	1988	% 89 to 88	Cumulative Total FY 89-90	Cal. Yr. 89
Requested	1,471	1,398	5%	8,944	17,584
Filed	707	557	27%	4,151	7,124
17b	245	462	−47%	1,099	2,558
Rejected	215	306	−30%	1,383	2,762
Informations Filed	91	128	−29%	749	1,504
17b Reduction @ Prelim	121	101	20%	512	953
Dismissals @ Prelim	33	65	−49%	245	548
Dism Refiled as Felonies	6	10	−40%	33	96
Pending Homicides	62	55	13%	N/A	N/A
Violation of Probation	3	2	50%	48	56
State Prison Commitments	154	116	33%	1,096	2,050

Felony Trials Completed:	Riverside Division G	NG	H
a) Original Plea Guilty (859 PC)	159	N/A	N/A
b) Change Plea, Sup Ct	54	N/A	N/A
c) Trials: Jury	11	1	0
Court	0	0	N/A
Totals: a,b,c	224	1	0

Felony Trials Completed:	Desert Division G	NG	H
a) Original Plea Guilty (859 PC)	64	N/A	N/A
b) Change Plea, Sup Ct	2	N/A	N/A
c) Trials: Jury	0	1	0
Court	0	0	N/A
Totals: a,b,c	66	1	0

Felony Trials Completed:	County Totals G	NG	H
a) Original Plea Guilty (859 PC)	223	N/A	N/A
b) Change Plea, Sup Ct	56	N/A	N/A
c) Trials: Jury	11	2	0
Court	0	0	N/A
Totals: a,b,c	290	2	0

Felony Trials Completed:	Cumulative Total FY 89-90 G	NG	H	Cal Yr. 1989 G	NG	H
a) Original Plea Guilty (859 PC)	1,365	N/A	N/A	2,340	N/A	N/A
b) Change Plea, Sup Ct	479	N/A	N/A	1,118	N/A	N/A
c) Trials: Jury	61	8	6	134	22	13
Court	4	0	N/A	8	0	N/A
Totals: a,b,c	1,909	8	6	3,600	22	13

EXHIBIT A

MISDEMEANOR STATISTICAL INFORMATION RIVERSIDE COUNTY DISTRICT ATTORNEY'S OFFICE Month of December, 1989

	Riverside Division			
			Cumulative Total	
	1989	1988	FY 89-90	Cal Yr 1989
Misdemeanors:				
Requested	1,173	1,375	8,265	16,258
Filed	900	1,162	5,854	10,121
Rejected	112	205	868	1,602
Violation of Probation	36	60	235	437
Case Dismissals	91	98	613	1,382

	Desert Division			
			Cumulative Total	
	1989	1988	FY 89-90	Cal Yr 1989
Misdemeanors:				
Requested	788	616	3,864	8,670
Filed	707	517	3,159	7,080
Rejected	130	145	980	2,079
Violation of Probation	25	37	135	432
Case Dismissals	36	59	359	807

	County Totals				
				Cumulative Total	
	1989	1988	% 89 to 88	FY 89-90	Cal Yr 1989
Misdemeanors:					
Requested	1,961	1,991	−2%	12,129	24,928
Filed	1,607	1,679	−4%	9,013	17,201
Rejected	242	350	−31%	1,848	3,681
Violation of Probation	61	97	−37%	370	869
Case Dismissals	127	157	−19%	972	2,189

	Riverside Division		
	G	NG	H
Misdemeanor Trials Completed:			
a. IRC Plea	703	N/A	N/A
b. Trials: Jury	10	2	0
Court	0	0	N/A
Totals:	713	2	0

	Desert Division		
	G	NG	H
Misdemeanor Trials Completed:			
a. IRC Plea	370	N/A	N/A
b. Trials: Jury	3	0	0
Court	0	0	N/A
Totals:	373	0	0

	County Totals		
	G	NG	H
Misdemeanor Trials Completed:			
a. IRC Plea	1,073	N/A	N/A
b. Trials: Jury	13	2	0
Court	0	0	N/A
Totals:	1,086	2	0

	Cumulative Totals					
	FY Yr 89-90			Cal Yr 1989		
	G	NG	H	G	NG	H
Misdemeanor Trials Completed:						
a. IRC Plea	6,986	N/A	N/A	13,200	N/A	N/A
b. Trials: Jury	74	17	11	169	42	0
Court	14	1	N/A	43	6	N/A
Totals:	7,074	18	11	13,412	14	0

EXHIBIT B

EXHIBIT B

INITIAL HEARING PROCEDURES FOR WARRANTLESS ARRESTS

State	Statute/ Court Rule Citation	Hours Before Initial Hearing	Probable Cause Determined At Initial Hearing?
Alabama	(Alabama always proceeds on indictment. For misd., no detention for warrantless arrests)	N/A	N/A

Adversary Proceeding?	If No Prob. Cause Finding, Prelim After Initial Hearing?	Unccodified Policy
N/A	N/A	N/A

State	Statute/ Court Rule Citation	Hours Before Initial Hearing	Probable Cause Determined At Initial Hearing?
Alaska	Alaska Stat. Sections 12.25.150(a), 12.30.020(a) (1990) Alaska Rules of Ct.-Crim Rules, Rules 5(e)(1), 53 (1990)	24 hours including Sundays and holidays, except if "strict adherance" to [Rules] will work injustice" (See Rule 53)	Yes (See 12.30.020(a))

Adversary Proceeding?	If No Prob. Cause Finding, Prelim After Initial Hearing?	Unccodified Policy
No	N/A	Same as code

INITIAL HEARING PROCEDURES FOR WARRANTLESS ARRESTS (Continued)

State	Statute/ Court Rule Citation	Hours Before Initial Hearing	Probable Cause Determined At Initial Hearing?
Arizona	Arizona Rev. Stat. Ann. Vol. 17, Rules 4.1, 4.2 (1987)	24 hours	Yes Judge reads release questionnare (See Comment, p.25)

Adversary Proceeding?	If No Prob. Cause Finding, Prelim After Initial Hearing?	Unco dified Policy
No (See Comment p.25)	N/A	Same as code

State	Statute/ Court Rule Citation	Hours Before Initial Hearing	Probable Cause Determined At Initial Hearing?
Arkansas	Arkansas Stat. Ann. Ct. Rules, Rules 8.1, 8.3 (1990)	No unnecessary delay	Yes (Rules 8.3)

Adversary Proceeding?	If No Prob. Cause Finding, Prelim After Initial Hearing?	Unco dified Policy
No	N/A	Reasonable - no particular time limit. Statewide policy

INITIAL HEARING PROCEDURES FOR WARRANTLESS ARRESTS (Continued)

State	Statute/ Court Rule Citation	Hours Before Initial Hearing	Probable Cause Determined At Initial Hearing?
Colorado	Colorado Rev. Stat. Vol. 7B, Ct. Rules, Rule 5 (1984)	No unnecessary delay	No

Adversary Proceeding?	If No Prob. Cause Finding, Prelim After Initial Hearing?	Unco dified Policy
No	Yes (Rule 5(a)(4)) State or defendant may make demand within 10 days	Morning after arrest; no more than 72 hours

State	Statute/ Court Rule Citation	Hours Before Initial Hearing	Probable Cause Determined At Initial Hearing?
Connecticut	Connecticut P.B. Sections 635, 650, 651 (1990)	Next day ct. in session; if continuance requested, second ct. day. (See Sec. 651)	Yes (Conn. P.B. Section 650)

Adversary Proceeding?	If No Prob. Cause Finding, Prelim After Initial Hearing?	Unco dified Policy
No	N/A	Same as practice book

INITIAL HEARING PROCEDURES FOR WARRANTLESS ARRESTS (Continued)

State	Statute/ Court Rule Citation	Hours Before Initial Hearing	Probable Cause Determined At Initial Hearing?
Delaware	Delaware Code Ann., Rules — Sup. Ct., Rule 5 (1975)	No unnecessary delay	Yes (Rule 5(a))

Adversary Proceeding?	If No Prob. Cause Finding, Prelim After Initial Hearing?	Uncodified Policy
No	N/A	Reasonableness; try to be within 24 hours

State	Statute/ Court Rule Citation	Hours Before Initial Hearing	Probable Cause Determined At Initial Hearing?
District of Columbia	D.C. Code Ann. Sections 23-562(c)(1), 23-1322 (1989)	No unnecessary delay	Yes Unless state moves for continuance (not more than 5 days) (Rule 23-1322(c)(3))

Adversary Proceeding?	If No Prob. Cause Finding, Prelim After Initial Hearing?	Uncodified Policy
No	N/A	Arraignment within 24 hours prob. cause hearing at arraignment Mon.-Sat. arraignments

INITIAL HEARING PROCEDURES FOR WARRANTLESS ARRESTS (Continued)

State	Statute/Court Rule Citation	Hours Before Initial Hearing	Probable Cause Determined at Initial Hearing?
Florida	Florida Stat. Ann. Vol. 33 Rules of Crim. Proc., Rules 3.132, 3-133 (1989)	24 hours	Yes (See Rules 3.132(a), (b); 3.133(a)(1))

Adversary Proceeding?	If No Prob. Cause Finding, Prelim After Initial Hearing?	Uncodified Policy
No	N/A	Same as ct. rules

State	Statute/Court Rule Citation	Hours Before Initial Hearing	Probable Cause Determined at Initial Hearing?
Georgia	Georgia Code Ann. Section 27-212 (1988)	48 hours	Yes Magistrate receives/examines affidavit

Adversary Proceeding?	If No Prob. Cause Finding, Prelim After Initial Hearing?	Uncodified Policy
No	N/A	Same as code

INITIAL HEARING PROCEDURES FOR WARRANTLESS ARRESTS (Continued)

State	Statute/Court Rule Citation	Hours Before Initial Hearing	Probable Cause Determined at Initial Hearing?
Hawaii	Hawaii Rev. Stat. Section 803-9(5) (1985) Hawaii Rules of Crim. Proc., Rule 5 (199)	48 hours (*See also Kanekoa v. City and County of Honolulu*, 879 F.2d 607 (9th Cir. 1989))	No

Adversary Proceeding?	If No Prob. Cause Finding, Prelim After Initial Hearing?	Uncodified Policy
Yes At prelim	Yes within 48 hours (See Rule 5)	*Kanekoa*: hold only for admin. purposes. Policy: 'round the clock charging by D.A.'s

INITIAL HEARING PROCEDURES FOR WARRANTLESS ARRESTS (Continued)

State	Statute/Court Rule Citation	Hours Before Initial Hearing	Probable Cause Determined at Initial Hearing?
Idaho	Idaho Code Crim. Rules Rule 4(e), 5(b), (c) (1987)	24 hours, excluding weekends and holidays	Yes (Rule 5(e))

Adversary Proceeding?	If No Prob. Cause Finding, Prelim After Initial Hearing?	Uncodified Policy
No	N/A	Same as code; rumblings of rule change to 48 hours. Note: if arrested after 6:30 a.m. cutoff, will be seen on afternoon of next day — more than 24 hours

State	Statute/Court Rule Citation	Hours Before Initial Hearing	Probable Cause Determined At Initial Hearing?
Illinois	Illinois Ann. Stat. Ch. 38, para. 109-1 (Smith-Hurd 1980)	No unnecessary delay	Yes (Para. 109-1(b)(3)) (See Comment pp. 244-45)

Adversary Proceeding?	If No Prob. Cause Finding, Prelim After Initial Hearing?	Uncodified Policy
Can be	N/A	Reasonableness

INITIAL HEARING PROCEDURES FOR WARRANTLESS ARRESTS (Continued)

State	Statute/ Court Rule Citation	Hours Before Initial Hearing	Probable Cause Determined At Initial Hearing?
Indiana	Indiana Code Ann. Sections 35-33-7-1, 35-33-7-2, 35-33-7-3 (Burns, 1985)	Taken promptly; up to 72 hours (Rule 35-33-7-3)	Yes Affidavit (Rule 35-33-7-2)

Adversary Proceeding?	If No Prob. Cause Finding, Prelim After Initial Hearing?	Uncodified Policy
No	N/A	Typically, the same day. If arrested too late, next day.

State	Statute/ Court Rule Citation	Hours Before Initial Hearing	Probable Cause Determined At Initial Hearing?
Iowa	Iowa Rules Crim. Proc. Rules 1(c), 2(1) (1990)	24 hours, including weekends	Yes

Adversary Proceeding?	If No Prob. Cause Finding, Prelim After Initial Hearing?	Uncodified Policy
No	N/A	Same as code

State	Statute/ Court Rule Citation	Hours Before Initial Hearing	Probable Cause Determined At Initial Hearing?
Kansas	Kansas Stat. Ann. Section 22-2901 (1988)	No unnecessary delay	Yes

Adversary Proceeding?	If No Prob. Cause Finding, Prelim After Initial Hearing?	Uncodified Policy
No	N/A	24 hours

INITIAL HEARING PROCEDURES FOR WARRANTLESS ARRESTS (Continued)

State	Statute/ Court Rule Citation	Hours Before Initial Hearing	Probable Cause Determined At Initial Hearing?
Kentucky	Ky. Rev. Stat. Ann., Rules of Crim. Proc., RCr. 3.02 (Baldwin 1988)	No unnecessary delay	Yes

Adversary Proceeding?	If No Prob. Cause Finding, Prelim After Initial Hearing?	Uncodified Policy
No	N/A	ASAP to magistrate; includes weekend arraignments

State	Statute/ Court Rule Citation	Hours Before Initial Hearing	Probable Cause Determined At Initial Hearing?
Louisiana	Louisiana Rev. Stat. Ann., Code of Crim. Proc. Vol. 1, Art. 230.1 (West Cum. Supp. 1990)	72 hours, weekends and holidays excluded	No

Adversary Proceeding?	If No Prob. Cause Finding, Prelim After Initial Hearing?	Uncodified Policy
Yes	Yes (Section 292 - defendant or state may request hearing)	Same as code

INITIAL HEARING PROCEDURES FOR WARRANTLESS ARRESTS (Continued)

State	Statute/ Court Rule Citation	Hours Before Initial Hearing	Probable Cause Determined At Initial Hearing?
Maine	Maine Rules of Crim. Proc. Rule 5(a) (1989)	48 hours	Yes

Adversary Proceeding?	If No Prob. Cause Finding, Prelim After Initial Hearing?	Uncodified Policy
No	N/A	Same as code

State	Statute/ Court Rule Citation	Hours Before Initial Hearing	Probable Cause Determined At Initial Hearing?
Maryland	Maryland Rules Ann. Rule 4-212(f) (1990)	24 hours	Yes Warrant lodged with court and examined as a detainer

Adversary Proceeding?	If No Prob. Cause Finding, Prelim After Initial Hearing?	Uncodified Policy
No	N/A	Weekends excluded

State	Statute/ Court Rule Citation	Hours Before Initial Hearing	Probable Cause Determined At Initial Hearing?
Massachusetts	Mass. Gen. Laws Ann., Rules of Crim. Proc., Rule 7(a) (West 1980)	Day of arrest or next day	Yes Judge receives affidavit

Adversary Proceeding?	If No Prob. Cause Finding, Prelim After Initial Hearing?	Uncodified Policy
No	N/A	Weekends excluded

INITIAL HEARING PROCEDURES FOR WARRANTLESS ARRESTS (Continued)

State	Statute/ Court Rule Citation	Hours Before Initial Hearing	Probable Cause Determined At Initial Hearing?
Michigan	Michigan Stat. Ann. Rules 2, Rule 6.104(D) (Callaghan 1990)	(No time requirement)	Yes Complaint received at initial hearing for prob. cause

Adversary Proceeding?	If No Prob. Cause Finding, Prelim After Initial Hearing?	Uncodified Policy
No	N/A	Arraignment without unnecessary delay, usually within 24 hours

State	Statute/ Court Rule Citation	Hours Before Initial Hearing	Probable Cause Determined At Initial Hearing?
Minnesota	Minnesota Stat. Ann., Rules of Crim. Proc., Rule 4.02, (Subd. 5) (West 1979) (See also Comment, Rule 4, pp. 15-16)	36 hours, not including day of arrest, Sundays or holidays	Yes

Adversary Proceeding?	If No Prob. Cause Finding, Prelim After Initial Hearing?	Uncodified Policy
No	N/A	Time starts at midnight of day of arrest

INITIAL HEARING PROCEDURES FOR WARRANTLESS ARRESTS (Continued)

State	Statute/ Court Rule Citation	Hours Before Initial Hearing	Probable Cause Determined At Initial Hearing?
Mississippi	Miss. Code Ann. Section 99-3-17 (1973)	No unnecessary delay	Yes

Adversary Proceeding?	If No Prob. Cause Finding, Prelim After Initial Hearing?	Unodified Policy
No	N/A	24 hours, except weekends, or if judge unavailable

State	Statute/ Court Rule Citation	Hours Before Initial Hearing	Probable Cause Determined At Initial Hearing?
Missouri	Missouri Rules of Ct., Rules 21.11, 22.06 (West 1990)	20 hours	Yes

Adversary Proceeding?	If No Prob. Cause Finding, Prelim After Initial Hearing?	Unodified Policy
No	N/A	Same as code

State	Statute/ Court Rule Citation	Hours Before Initial Hearing	Probable Cause Determined At Initial Hearing?
Montana	Montana Code Ann. Section 46-7-102 (1988)	Without unreasonable delay	No Initial appearance is arraignment only

Adversary Proceeding?	If No Prob. Cause Finding, Prelim After Initial Hearing?	Unodified Policy
N/A	Yes Afforded both felonies and misdemeanors	Same as code

INITIAL HEARING PROCEDURES FOR WARRANTLESS ARRESTS (Continued)

State	Statute/ Court Rule Citation	Hours Before Initial Hearing	Probable Cause Determined At Initial Hearing?
Nebraska	Nebraska Rev. Stat. Section 29-504 (1989)	As soon as may be possible	Varies: sometimes at initial app., sometimes after arraignment

Adversary Proceeding?	If No Prob. Cause Finding, Prelim After Initial Hearing?	Unodified Policy
Yes, if requested	The prob. cause to arrest hearing and prelim on charges are combined	In rural counties, judges circulate. Is possible an arrestee may be held for a week before judge arrives to determine prob. cause or arraign.

State	Statute/ Court Rule Citation	Hours Before Initial Hearing	Probable Cause Determined At Initial Hearing?
Nevada	Nevada Rev. Stat. Section 171.178 (1987)	72 hours, excluding weekends and holidays	No

Adversary Proceeding?	If No Prob. Cause Finding, Prelim After Initial Hearing?	Unodified Policy
N/A	Yes Afforded both suspected felonies and misdemeanors	Same as code

INITIAL HEARING PROCEDURES FOR WARRANTLESS ARRESTS (Continued)

State	Statute/ Court Rule Citation	Hours Before Initial Hearing	Probable Cause Determined At Initial Hearing?
New Hampshire	N.H. Rev. Stat. Ann. Section 594:20-a (1955)	24 hours	Yes

Adversary Proceeding?	If No Prob. Cause Finding, Prelim After Initial Hearing?	Unodified Policy
No	Indictment is by Grand Jury	Same as code

State	Statute/ Court Rule Citation	Hours Before Initial Hearing	Probable Cause Determined At Initial Hearing?
New Jersey	N.J. Ct. Rules Rule 3:4-3 (1990)	Reasonable time	Yes

Adversary Proceeding?	If No Prob. Cause Finding, Prelim After Initial Hearing?	Unodified Policy
Yes	N/A	Same as code

State	Statute/ Court Rule Citation	Hours Before Initial Hearing	Probable Cause Determined At Initial Hearing?
New Mexico	N.M. Stat. Ann., Code of Crim. Proc. Section 7-203 (1978)	24 hours, except Sat., Sun., holidays; never to exceed 72 hours	Yes

Adversary Proceeding?	If No Prob. Cause Finding, Prelim After Initial Hearing?	Unodified Policy
No	N/A	Same as code

INITIAL HEARING PROCEDURES FOR WARRANTLESS ARRESTS (Continued)

State	Statute/ Court Rule Citation	Hours Before Initial Hearing	Probable Cause Determined At Initial Hearing?
New York	N.Y. Crim. Proc. Law Section 140.20 (1984)	Without unnecessary delay. *Williams v. Ward*, 845 F.2d 374 (2nd Cir. 1988) interprets as three days	Yes

Adversary Proceeding?	If No Prob. Cause Finding, Prelim After Initial Hearing?	Unodified Policy
No	N/A	Prob. cause determination currently being made within 24-36 hours

State	Statute/ Court Rule Citation	Hours Before Initial Hearing	Probable Cause Determined At Initial Hearing?
North Carolina	N.C. Gen. Stat. Sections 15A-511 15A-501, 15A-601 (1989)	Not to exceed 96 hours	No

Adversary Proceeding?	If No Prob. Cause Finding, Prelim After Initial Hearing?	Unodified Policy
N/A	Yes At first appearance prob. cause hearing set within 15 working days	Same as code

INITIAL HEARING PROCEDURES FOR WARRANTLESS ARRESTS (Continued)

State	Statute/ Court Rule Citation	Hours Before Initial Hearing	Probable Cause Determined At Initial Hearing?
North Dakota	N.D. Cent. Code Section 29-06-25 (1960)	Without unnecessary delay	No

Adversary Proceeding?	If No Prob. Cause Finding, Prelim After Initial Hearing?	Unrodified Policy
N/A	Yes Set within a reasonable time	Same as code

State	Statute/ Court Rule Citation	Hours Before Initial Hearing	Probable Cause Determined At Initial Hearing?
Ohio	Ohio Rev. Code Ann., Rules of Crim. Proc., Rule 4(E)(2) (Baldwin 1989)	Without unnecessary delay	No

Adversary Proceeding?	If No Prob. Cause Finding, Prelim After Initial Hearing?	Unrodified Policy
N/A	Yes Prelim provided for felony suspects. Must be scheduled within 15 days	24 hours

INITIAL HEARING PROCEDURES FOR WARRANTLESS ARRESTS (Continued)

State	Statute/ Court Rule Citation	Hours Before Initial Hearing	Probable Cause Determined At Initial Hearing?
Oklahoma	Oklahoma Stat. Ann. Sections 22-181, 22-251 (West 1969)	Without unnecessary delay	Yes (felonies only)

Adversary Proceeding?	If No Prob. Cause Finding, Prelim After Initial Hearing?	Unrodified Policy
The magistrate examines the accused under oath and examines complaint with any affidavits	Initial Hearing is the prelim	48 hours

State	Statute/ Court Rule Citation	Hours Before Initial Hearing	Probable Cause Determined At Initial Hearing?
Oregon	Oregon Rev. Stat. Sections 133.805, 135.010, 135.070 (1989)	36 hours, excluding weekends and holidays; never to exceed 96 hours	No

Adversary Proceeding?	If No Prob. Cause Finding, Prelim After Initial Hearing?	Unrodified Policy
N/A	Yes Not to exceed five days from date of arraignment (felonies only)	No prelims in most counties — Grand Jury indictments are the norm.

INITIAL HEARING PROCEDURES FOR WARRANTLESS ARRESTS (Continued)

State	Statute/ Court Rule Citation	Hours Before Initial Hearing	Probable Cause Determined At Initial Hearing?
Pennsylvania	Penn. Rules of Crim. Proc. Rules 130, 140 (West 1989)	Without unnecessary delay	Yes

Adversary Proceeding?	If No Prob. Cause Finding, Prelim After Initial Hearing?	Uncodified Policy
No	N/A	Same as code

State	Statute/ Court Rule Citation	Hours Before Initial Hearing	Probable Cause Determined At Initial Hearing?
Puerto Rico *(see end)			

Adversary Proceeding?	If No Prob. Cause Finding, Prelim After Initial Hearing?	Uncodified Policy

State	Statute/ Court Rule Citation	Hours Before Initial Hearing	Probable Cause Determined At Initial Hearing?
Rhode Island	Rhode Island Ct. Rules, Sup. Ct. Rules of Crim. Proc. Rule 5 (1990)	48 hours, excluding holidays & weekends	Yes

Adversary Proceeding?	If No Prob. Cause Finding, Prelim After Initial Hearing?	Uncodified Policy
No	N/A	Same as code

INITIAL HEARING PROCEDURES FOR WARRANTLESS ARRESTS (Continued)

State	Statute/ Court Rule Citation	Hours Before Initial Hearing	Probable Cause Determined At Initial Hearing?
South Carolina *(see end)			

Adversary Proceeding?	If No Prob. Cause Finding, Prelim After Initial Hearing?	Uncodified Policy

State	Statute/ Court Rule Citation	Hours Before Initial Hearing	Probable Cause Determined At Initial Hearing?
South Dakota	So. Dakota Codified Laws Ann., Section 23A-4-1 (1988)	Without unnecessary delay	No

Adversary Proceeding?	If No Prob. Cause Finding, Prelim After Initial Hearing?	Uncodified Policy
N/A	Yes (for all felonies and some misd. suspects)	Same as code

State	Statute/ Court Rule Citation	Hours Before Initial Hearing	Probable Cause Determined At Initial Hearing?
Tennessee	Tenn. Code Ann. Section 40-5-103 (1982)	Without unnecessary delay	Yes

Adversary Proceeding?	If No Prob. Cause Finding, Prelim After Initial Hearing?	Uncodified Policy
Magistrate examines officer and defendant	N/A	Same as code

INITIAL HEARING PROCEDURES FOR WARRANTLESS ARRESTS (Continued)

State	Statute/ Court Rule Citation	Hours Before Initial Hearing	Probable Cause Determined At Initial Hearing?
Texas	Texas Code of Crim. Proc. Section 14.06 (1989)	Without unnecessary delay	Yes

Adversary Proceeding?	If No Prob. Cause Finding, Prelim After Initial Hearing?	Uncodified Policy
Felonies: adversarial hearing may be requested. Misd. complaint and affidavits examined	N/A	24 hours, excluding weekends & holidays

State	Statute/ Court Rule Citation	Hours Before Initial Hearing	Probable Cause Determined At Initial Hearing?
Utah	Utah Code Ann., Code of Crim. Proc. Section 77-7-23 (1990)	Without unnecessary delay	No

Adversary Proceeding?	If No Prob. Cause Finding, Prelim After Initial Hearing?	Uncodified Policy
N/A	Yes	Same as code

State	Statute/ Court Rule Citation	Hours Before Initial Hearing	Probable Cause Determined At Initial Hearing?
Vermont	Vermont Stat. Ann., Rules of Crim. Proc. Rule 3(b) (1983)	Without unnecessary delay	Yes

Adversary Proceeding?	If No Prob. Cause Finding, Prelim After Initial Hearing?	Uncodified Policy
Left to discretion of ct. whether witnesses may be examined	Yes	Same as code

INITIAL HEARING PROCEDURES FOR WARRANTLESS ARRESTS (Continued)

State	Statute/ Court Rule Citation	Hours Before Initial Hearing	Probable Cause Determined At Initial Hearing?
Virginia	Virginia Code Ann., Sections 19.2-81, 19.2-82 (1986)	Brought forthwith	Yes

Adversary Proceeding?	If No Prob. Cause Finding, Prelim After Initial Hearing?	Uncodified Policy
No	N/A	Same as code

State	Statute/ Court Rule Citation	Hours Before Initial Hearing	Probable Cause Determined At Initial Hearing?
U.S. Virgin Islands	V.I. Code Ann. Section 14-305-3562 (1988)	Reasonable time	Yes

Adversary Proceeding?	If No Prob. Cause Finding, Prelim After Initial Hearing?	Uncodified Policy
No	Yes	Initial appearance must be within 3 days

State	Statute/ Court Rule Citation	Hours Before Initial Hearing	Probable Cause Determined At Initial Hearing?
Washington	Washington Rev. Code Ann., Sup. Ct. Crim. Rules, Rule 3.2.1(a)(1) (1990)	24 hours, not including weekends & holidays	Yes

Adversary Proceeding?	If No Prob. Cause Finding, Prelim After Initial Hearing?	Uncodified Policy
No	N/A	Same as code

INITIAL HEARING PROCEDURES FOR WARRANTLESS ARRESTS (Continued)

State	Statute/ Court Rule Citation	Hours Before Initial Hearing	Probable Cause Determined At Initial Hearing?
West Virginia	W. Va. Code, Rules of Crim. Proc. Rule 62-1-5 (1989)	Without unnecessary delay. Judges circulate in rural areas and suspects may be held for up to a week	Yes

Adversary Proceeding?	If No Prob. Cause Finding, Prelim After Initial Hearing?	Uncodified Policy
Prob. cause determined by examining face of complaint. For citizen complaints, ct. may ask for police investigation	Yes	Old rule that suspect could not be incarcerated without prob. cause determination. This has only recently changed

State	Statute/ Court Rule Citation	Hours Before Initial Hearing	Probable Cause Determined At Initial Hearing?
Wisconsin	Wisconsin Stat. Section 970.01 (1989)	Reasonable time	Yes (But not for suspected misdemeanants)

Adversary Proceeding?	If No Prob. Cause Finding, Prelim After Initial Hearing?	Uncodified Policy
Yes For felony suspects	N/A	May be held up to four days

INITIAL HEARING PROCEDURES FOR WARRANTLESS ARRESTS (Continued)

State	Statute/ Court Rule Citation	Hours Before Initial Hearing	Probable Cause Determined At Initial Hearing?
Wyoming	Wyoming Stat., Rules of Crim. Proc., Rule 5 (1978)	Without unnecessary delay	Defendant informed of rights, of charges, and bail set. No clear prob. cause determination made.

Adversary Proceeding?	If No Prob. Cause Finding, Prelim After Initial Hearing?	Uncodified Policy
N/A	Yes For felony suspects	For complex cases, defendants often held up to 72 hours

* Unable to obtain reliable information for South Carolina and Puerto Rico.

STATUTORY vs. UNOFFICIAL POLICY: HOURS BEFORE INITIAL APPEARANCE

Statutory Rule Hours Before Initial Hearing	No. of States/ Territories	Unofficial Policy Hours Before Initial Hearing	No. of States/ Territories
20	1	20	1
24	11	24	19
36	2	36	3
48	4	48	5
72	3	72	5
96	1	96	2
No unnec. delay	26	No unnec. delay	14
No time requirement	2	No time requirement	1
	50		50

NOTE: No reliable data for South Carolina and Puerto Rico. Count includes the District of Columbia and the Virgin Islands